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Mechanical, LLC and Royal Metal Works Corporation*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In RE: ) CASE NO.: 11-10202-MKN  
)  
BESO, LLC )  
)  
)

**MOTION TO CONFIRM SETTLEMENT**

COMES NOW Plaintiff/Lien Claimant BOMBARD ELECTRIC, LLC, Lien  
Claimant BOMBARD MECHANICAL, LLC, and Lien Claimant ROYAL METAL WORKS  
CORPORATION (hereinafter "Moving Parties"), by and through their attorney, Donald H.  
Williams, Esq. of The Law Offices of WILLIAMS & ASSOCIATES, and hereby move this  
Court to confirm the settlement reached by the parties at the November 10<sup>th</sup>, 2010 settlement  
conference. This Motion is based on the following Points and Authorities, the exhibits  
attached hereto, and the argument of counsel at the time of hearing on this matter.

**POINTS AND AUTHORITIES**

The Moving Parties' claims arise out of construction work performed by them on a  
Restaurant known as Beso located at CityCenter Las Vegas. Work was performed under  
contract with Baz Construction, Inc. at the request of Debtor and CityCenter. The Moving  
Parties initially filed a Complaint in District Court and had been litigating said case for  
approximately a year before Beso, LLC filed bankruptcy.

On November 10<sup>th</sup>, 2010, prior to the filing of the bankruptcy petition by Debtor, the  
parties attended a settlement conference and reached a mutually agreeable settlement.<sup>1</sup>

///

<sup>1</sup> See *Transcript of Proceedings* attached hereto as Exhibit 1.

1 However, due to delays caused by an unrelated Motion to disqualify one of CityCenter's  
2 attorneys, the Moving Parties were unable to have the Court confirm the settlement before  
3 the Debtor filed its bankruptcy petition.

4 As the Court can see from Exhibit 1, the settlement in question doesn't actually  
5 contemplate any payment from the debtor whatsoever. The payment would come from  
6 CityCenter itself and from Valley Construction Services, the construction controller. For this  
7 reason, it is in the best interest of both the Moving Parties and the Debtor to confirm this  
8 settlement. However, because the Moving Parties have valid claims against the Debtor, the  
9 Moving Parties had no other choice but to appear in this litigation and file their claims  
10 (Claims 3-1, 4-1 and 5-1) to protect their interests. The Moving Parties believe that all parties  
11 to the settlement are still agreeable to its terms. The only thing standing in the way of  
12 settlement is confirmation from the Court. The bankruptcy court now has jurisdiction over  
13 these matters as the District Court proceedings are stayed pending the outcome of the  
14 bankruptcy.

15 The Moving Parties therefore respectfully request that this Court confirm the  
16 settlement between the parties.

17  
18 DATED this  day of February, 2011.

19 WILLIAMS & ASSOCIATES

20  
21   
22 DONALD H. WILLIAMS, ESQ.

23 State Bar No. 5548

24 612 South Tenth Street

25 Las Vegas, Nevada 89101

26 *Attorney for Bombard Electric, LLC,*

27 *Bombard Mechanical, LLC and Royal*

28 *Metal Works Corporation*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Williams & Associates, and that on the 28 day of February, 2011, I submitted for mailing in Las Vegas, Nevada a true copy of the foregoing

**MOTION TO CONFIRM SETTLEMENT** in the above matter to the parties listed below:

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*Counsel for Beso, LLC*

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*Counsel for Big Town Mechanical*

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*In House Counsel for F. Rodgers Corporation*

Frank Perez, Esq.  
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*Counsel for Long Building Technologies*

R. Christopher Reade, Esq.  
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*Counsel for Cell-Crete Corp.*

Isaiah Alexander Jerez, Esq.  
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11 YOUNG ELECTRIC SIGN COMPANY  
12 2401 Foothill Dr.  
13 Salt Lake City, UT 84109

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15 3710 W. Sunset Rd.  
16 Las Vegas, NV 89118

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18 c/o Danielle Juleen  
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20 Las Vegas, NV 89149

21 UNIVERSAL CONSULTING CORPORATION  
22 dba A-1 CONCRETE CUTTING  
23 6470 South Procyon  
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25 NORMAN S. WRIGHT MECHANICAL  
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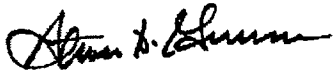
27   
28 Employee of WILLIAMS & ASSOCIATES

# EXHIBIT 1

1 TRANS

2 ORIGINAL

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CLERK OF THE COURT

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 BOMBARD ELECTRIC, LLC, )

7 Plaintiff, )

8 vs. )

9 BESO, LLC, et al., )

10 Defendants. )

Case No. A608871

Dept. XIII

Consolidated with:

A607921

A609574

A616710

A618080

A619954

11  
12  
13  
14  
15 TRANSCRIPT OF PROCEEDINGS  
OF

16 SETTLEMENT CONFERENCE  
VOLUME 1

17 BEFORE THE HONORABLE SALLY LOEHRER  
AND

18 BEFORE THE HONORABLE STEWART BELL  
19 EIGHTH JUDICIAL SENIOR DISTRICT COURT JUDGES

20 Wednesday, November 10, 2010

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22  
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24  
25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

RECEIVED  
DEC 02 2010  
CLERK OF THE COURT



## 1 APPEARANCES:

2 For Crystals CLARK T. THIEL, ESQ.  
3 at CityCenter, LLC: Howrey, LLP  
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5 For Beso, LLC: JAMES J. PISANELLI, ESQ.  
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11 For Bombard Electric, DONALD H. WILLIAMS, ESQ.  
12 LLC, Bombard Williams & Wiese Law Offices  
13 Mechanical, LLC, and 612 South Tenth Street  
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Corporation:

14 For Big Town DALLIN T. WAYMENT, ESQ.  
15 Mechanical, LLC: Peel Brimley, LLP  
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17 For F. Rodgers REED J. WERNER, ESQ.  
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19 For LONG Building FRANK PEREZ, ESQ.  
20 Technologies: McCullough, Perez & Associates, Ltd.  
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22 For Cell-Crete R. CHRISTOPHER READE, ESQ.  
23 Corporation: Reade & Associates  
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1 APPEARANCES (Cont.):

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3 LLC: Unknown Address

4 Recorded by: CYNTHIA GEORGILAS, COURT RECORDER  
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1 (Court convened at 01:15:11 p.m.)

2 JUDGE LOEHRER: Let's go on the record.

3 THE CLERK: Okay.

4 JUDGE LOEHRER: Are we good now?

5 THE CLERK: Yes, we are, Judge.

6 JUDGE LOEHRER: All right. This is in regarding  
7 litigation at CityCenter Construction and Lien Master  
8 Litigation.

9 This is entitled the Beso, B-e-s-o, Subgroup and  
10 Bombard Electric, et al., versus Beso, Baz, B-a-z,  
11 Construction, the Crystals at CityCenter, Valley Construction  
12 Services, Great American Insurance Company.

13 There are a number of case numbers, A-10-608871,  
14 A-10-609574, A-10-607921, A-10-616710, A-10-618080,  
15 A-10-619954.

16 We have here at the settlement conference which started at  
17 9:00 this morning -- and it's now early afternoon. We have for  
18 CityCenter Clark Thiel, Counsel; for Beso, Jim Pisanelli and --

19 MR. MILTENBERGER: Chris Miltenberger.

20 JUDGE LOEHRER: -- Chris Miltenberger; for  
21 Bombard Electric -- I'm just going to give us the attorney  
22 names first.

23 And then when we call you up individually you'll come  
24 with your client, and the client will be identified for the  
25 record.

1           Bombard Electric represented by Don Williams;  
2           Bombard Mechanical by Don Williams; Royal Metal Works by  
3           Don Williams; Big Town Mechanical by Dallin Wayment;  
4           F. Rodgers Corporation by in-house counsel Reed Werner;  
5           LONG Building Tech by Frank Perez; Cell-Crete by Chris Reade;  
6           Baz Construction Company by Isaiah Jerez, J-e-r-e-z.

7           And the conference has been held in front of  
8           Senior Judges Loehrer and Bell the 10th day of  
9           November 2010.

10          The proposed global settlement in this case involves  
11          distribution of \$765,070.29. Those moneys are held by two  
12          entities.

13          Some of it is being held by CityCenter which is under the  
14          control of Clark Thiel, Counsel, and the balance of the money  
15          is held at Valley Construction Services. Valley Construction  
16          Services did not attend today's conference nor did it send a  
17          representative of any sort.

18          There are a number of parties here today who have filed  
19          and perfected lien claims and who are parties to the various  
20          lawsuits that I just mentioned.

21          And those are Bombard Electric, Bombard Mechanical,  
22          Royal Metal Works, Big Town Mechanical, F. Rodgers,  
23          LONG Building Tech, and Cell-Crete, and Baz Construction  
24          Company, as well as Beso, the restaurant, and, of course  
25          CityCenter.

1           There are entities to which the settlement proposes to pay  
2 money who are not parties to this action, and they are Siemens,  
3 Northstar, Schindler Elevator, YESCO, T. Nickolas, and Hyde.  
4 All of those which we've just mentioned are proposed to receive  
5 money by way of this settlement.

6           Additionally, Beso Restaurant has received claims from  
7 Norman Wright (phonetic), Oldcastle Glass, Omniteam (phonetic),  
8 and A-1 Concrete.

9           And as we get to each of the subs that they provided to,  
10 we'll be asking those subs to state on the record that they are  
11 going to be responsible for those venders I believe, so I guess  
12 we need to start with Mr. Thiel.

13           Would you come forward. Go to the podium, please, because  
14 that's where the microphone is, and tell us who you are.

15           MR. THIEL: Good afternoon, your Honor. Clark Thiel  
16 who represents the CityCenter entities.

17           JUDGE LOEHRER: All right. And we have discussed  
18 while we were all together and before we were on the record  
19 that the actual physical payment of this money that your  
20 company, CityCenter, would take the money that it has, it would  
21 get the money from Valley, and that you would disburse all the  
22 checks as soon as you get a lien release, a complete lien  
23 release, from each one of these parties to whom money is due.

24           MR. THIEL: Agreed.

25           JUDGE LOEHRER: Are you going to do anything else?

1 MR. THIEL: Lien releases and waivers, and then we  
2 would like agreement as to when the respective claims or the  
3 statements of fact will be withdrawn as well from the various  
4 parties.

5 JUDGE LOEHRER: All right. And how long will that  
6 take, gentlemen, Counsel? You'll send your lien releases over  
7 to Mr. Thiel.

8 He's going to get the money from Valley as quickly as  
9 possible. He'll start writing the checks, and you need to --  
10 do they need to be recordedly withdrawn? How does that happen?

11 MR. THIEL: I don't believe there are answers on file  
12 in any of them, so I believe it's just submitting a request --

13 JUDGE LOEHRER: Dismissal?

14 MR. READE: Your Honor, that is not correct.

15 MR. THIEL: That is not correct?

16 MR. READE: There are answers on file in a number of  
17 consolidated cases.

18 JUDGE LOEHRER: Okay. So then the proposal would be  
19 that you would just send around a dismissal, and it would be --

20 MR. THIEL: A stipulated dismissal.

21 JUDGE LOEHRER: -- a stipulated dismissal of all the  
22 cases?

23 JUDGE BELL: With prejudice.

24 JUDGE LOEHRER: With --

25 JUDGE BELL: Yeah.

1 JUDGE LOEHRER: Yeah. A stipulated dismissal --

2 JUDGE BELL: Each --

3 JUDGE LOEHRER: -- with prejudice of all.

4 JUDGE BELL: Each party bears their own fees and  
5 costs.

6 JUDGE LOEHRER: Yeah. And each party to bear their  
7 own fees and costs. All right.

8 Anything else, Mr. Thiel --

9 MR. THIEL: That's all --

10 JUDGE LOEHRER: -- from your end?

11 MR. THIEL: -- on my list.

12 JUDGE LOEHRER: Okay. Now, Mr. Pisanelli, on behalf  
13 of Beso, would you come forward with your owner representatives  
14 and have them -- you introduce yourself, please, and your owner  
15 representatives.

16 MR. PISANELLI: James Pisanelli, your Honor, on  
17 behalf of Beso. I'm here with Jonas Lowrance and Roy Saunders.

18 JUDGE LOEHRER: All right. Now, the settlement as it  
19 affects you is that you are going to be releasing and  
20 authorizing Valley Construction to release the money that is in  
21 your construction account at Valley to Mr. Thiel at CityCenter  
22 for the purpose of funding the proposed settlement today.

23 And in return, you are waiving all your  
24 construction-defect claims, but you're preserving your warranty  
25 on your equipment claims as long as those warranties might

1 last.

2 And is there anything else as it affects your client?

3 JUDGE BELL: Well, and the fact is that the total  
4 amount of this settlement is a percentage on the dollar to all  
5 these contractors and subcontractors.

6 And they are not only releasing their liens, but they're  
7 waiving any claims against you or your client for quantum  
8 meruit or anything else for the difference.

9 MR. PISANELLI: First, on the warranty issue,  
10 your Honors, it's our understanding, in particular, from our  
11 conversation outside that the warranties that would otherwise  
12 exist under these contracts would stay in place which is a  
13 little broader than just the equipment.

14 So, for instance, something was constructed correctly,  
15 originally, but it has not provided the usefulness for the year  
16 or whatever that warranty is, we would still have the ability  
17 to put the contractor on notice. They would come out  
18 preserving all of their defenses to the claim.

19 So, for instance, you have an outlet or something small  
20 happens. They come out. If they say, yes, that's still under  
21 warranty, they fix it.

22 If they have a defense to it that it was changed, that it  
23 wasn't our work, whatever the defenses may be, those would be  
24 preserved as well.

25 I just wanted to clarify that it's something more --

1 JUDGE LOEHRER: Okay. Um-h'm.

2 MR. PISANELLI: -- than just simply equipment, the  
3 warranties that come from the manufacturers.

4 JUDGE LOEHRER: So, Mr. Williams, what kind of  
5 warranties does your client have with the work done at Beso?

6 MR. WILLIAMS: My clients may need to speak directly  
7 to that, but I would say this much. We don't have warranties  
8 necessarily directly with Beso.

9 We have warranties with respect to the general contractor  
10 who may have warranties with respect to Beso. Without looking  
11 at the contracts right now, I don't want to comment too much  
12 more about that.

13 JUDGE LOEHRER: Okay.

14 MR. WILLIAMS: I will say that, generally, there is a  
15 year warranty period.

16 JUDGE LOEHRER: Okay. And, you know, we don't want  
17 there to be any misunderstanding on anybody's part.

18 So Robert from Baz Construction, is that approximately  
19 correct? There's a warranty in place for a year, and that  
20 probably runs whenever the restaurant opened which  
21 was --

22 MR. PISANELLI: About three more weeks.

23 JUDGE LOEHRER: December 4th or something like that?

24 MR. SAUNDERS: Yes. December 4th.

25 JUDGE LOEHRER: So there's about a three-week period

1 of time during which the one-year warranty would still be in  
2 effect?

3 MR. BAZAK: That's correct.

4 JUDGE LOEHRER: All right.

5 THE COURT RECORDER: I'm sorry, Judge. Who spoke?

6 JUDGE LOEHRER: That was Robert B-a-z- --

7 MR. BAZAK: A-k.

8 JUDGE LOEHRER: No. What's the rest of -- how do you  
9 spell the rest of your -- no. Wait. Wait a minute.

10 MR. BAZAK: B-a-z-a-k.

11 JUDGE LOEHRER: B-a-z-a-k, Bazak.

12 THE COURT RECORDER: Thank you.

13 JUDGE LOEHRER: Anything else, Mr. Pisanelli, from  
14 your client's perspective?

15 MR. PISANELLI: Yes. In connection -- again, what  
16 we're looking for is the same type of closure we would be  
17 getting if we were closing the project out today without  
18 litigation.

19 So that when we make the payments -- we have used the  
20 phrase Mr. Thiel did -- with the lien releases and waivers. We  
21 are understanding that that would include reps and warranties  
22 and waivers that all subs for the particular client or  
23 contractor that is being paid they have paid their own  
24 second-tier, third-tier suppliers and contractors.

25 So that if we do get someone with or without a mechanic's



1     lien coming forward under any of these contractors that have  
2     been paid that would be the responsibility of that contractor.

3             I want to make sure we're on the same page in that  
4     respect. In other words, no different than if we were closing  
5     the contract out in the ordinary course without litigation.

6             And then the only thing that I apologize to the parties  
7     and your Honor because I forgot to bring this up though it was  
8     in my notes, it is our understanding that Big Town Mechanical  
9     that the heat exchangers that we talked about throughout the  
10    process once they are paid would be delivered (indiscernible).

11            JUDGE LOEHRER: So, Mr. Barton.

12            Mr. Barton is here from Big Town.

13            And you told us during this conference that these heat  
14     exchangers were custom built for this restaurant. You can't  
15     use them anyplace else, and you've been trying to give them to  
16     them. So once they pay you, can they get them from you?

17            MR. WAYWENT: I think it's our understanding that we  
18     kind of thought that was separate, and they would buy them from  
19     us after the fact.

20            JUDGE LOEHRER: Well, they've already paid them for  
21     them now. It's part of your lien claim. It's part of the  
22     money you're getting paid.

23            MR. WAYWENT: Well --

24            JUDGE LOEHRER: Why should they pay for them twice?

25            MR. WAYWENT: The haircut we're taking, we don't feel

1 like they've paid for them once. Can I just talk to my client  
2 for a second?

3 JUDGE LOEHRER: Sure.

4 (Colloquy not on the record.)

5 MR. PISANELLI: Those were our only points.

6 JUDGE LOEHRER: Okay. Well, thank you, and we'll  
7 wait 'til Big Town gets back.

8 MR. PISANELLI: Do you want us to stay up here or did  
9 you want representations from clients on the record,  
10 your Honor?

11 JUDGE LOEHRER: We're not going to do anything 'til  
12 they come back, so everybody knows everything.

13 JUDGE BELL: Yeah. Stay right there.

14 MR. PISANELLI: Okay.

15 JUDGE BELL: We just want to make sure that --

16 (Colloquy not on the record.)

17 JUDGE BELL: We have no doubt that they're in total  
18 agreement with everything you say. But, occasionally, you  
19 know, after you put everything there, if you don't have that --

20 (Colloquy on the record.)

21 JUDGE BELL: -- on the record, occasionally, by  
22 tomorrow they're not in agreement, not your clients, just the  
23 great they out there.

24 (Colloquy not on the record.)

25 MR. PISANELLI: The reasonable man doesn't follow us

1 around after we leave the courtroom sometimes.

2 (Pause at 01:27:00 p.m.)

3 (Colloquy not on the record.)

4 (Pause concluded at 01:27:49 p.m.)

5 JUDGE LOEHRER: Okay. Mr. Wayment and Mr. Barton,  
6 what can we do?

7 MR. WAYMENT: We talked about it, and we're willing  
8 to provide them the heat exchange. They'll have to pick it up.  
9 They'll have to hook it up. No warranty and no installation  
10 from us.

11 JUDGE BELL: It sounds fair.

12 (Colloquy not on the record.)

13 JUDGE LOEHRER: Mr. Pisanelli?

14 MR. PISANELLI: We'll live with it.

15 JUDGE LOEHRER: All right. Thank you.

16 Why don't you fellows be seated.

17 JUDGE BELL: No, no, no.

18 JUDGE LOEHRER: Whoa. Oh, gentlemen.

19 (Colloquy not on the record.)

20 JUDGE BELL: Gentlemen, are you in full agreement  
21 with everything Mr. Pisanelli has said?

22 MR. LOWRANCE: Yes, your Honor.

23 MR. SAUNDERS: Yes.

24 JUDGE BELL: And you understand that while you may  
25 have some counterclaims for construction defects that you are

1 going to assume the responsibility for that in the future, hold  
2 these fellows harmless, and the consideration for that is  
3 they're not seeking anything over and above the retention  
4 amounts that are in the construction control accounts, right?

5 MR. LOWRANCE: Yes, your Honor.

6 JUDGE BELL: Okay.

7 MR. SAUNDERS: Yes, sir.

8 JUDGE BELL: Good.

9 JUDGE LOEHRER: All right. And the record will  
10 reflect that the other gentleman for the restaurant, Beso, is  
11 Roy Saunders, S-a-u-n-d-e-r-s, and the owner representative  
12 Jonas Lowrance, L-o-w-r-a-n-c-e.

13 JUDGE BELL: Okay.

14 MR. PISANELLI: That's correct.

15 JUDGE LOEHRER: Thank you.

16 JUDGE BELL: Thanks.

17 JUDGE LOEHRER: All right.

18 JUDGE BELL: Baz.

19 JUDGE LOEHRER: We have Robert Bazak, the principal  
20 of Baz Construction, and his attorney, Isaiah Jerez, J-e-r-e-z.

21 Mr. Bazak, are you in full agreement of receiving \$12,500  
22 as your full and final payment on all claims relating to the  
23 Beso Restaurant at CityCenter?

24 MR. BAZAK: Yes.

25 JUDGE LOEHRER: Now, there are parties who are not

1 present today, not parties to the lawsuit to the best of our  
2 knowledge, Siemens Electric who did fire-suppression work,  
3 Northstar -- what kind of work did they do?

4 MR. BAZAK: Fire sprinklers.

5 JUDGE LOEHRER: Fire sprinklers. Schindler Elevator,  
6 YESCO Sign Company, T. Nickolas did flooring, and Hyde did --

7 MR. BAZAK: Consulting. They --

8 JUDGE LOEHRER: And --

9 MR. BAZAK: Permit consulting.

10 JUDGE LOEHRER: Okay. Now, you have represented to  
11 us that you've made telephone calls today to Siemens, and that  
12 they are willing to accept \$64,190 as full and complete payment  
13 for all of their claims for work done at Beso Restaurant; is  
14 that correct?

15 MR. BAZAK: Yes.

16 JUDGE LOEHRER: And you have made contact with  
17 Northstar, and you have made a settlement with Northstar that  
18 they will accept \$5,000 as their full and complete payment for  
19 all their outstanding claims at Beso Restaurant.

20 MR. BAZAK: That's correct.

21 JUDGE LOEHRER: You have also made contact with  
22 Schindler Elevator, and they have agreed to accept \$3,100 as  
23 full and complete payment of their claims; is that correct?

24 MR. BAZAK: Yes.

25 JUDGE LOEHRER: You have contacted YESCO, and that

1 they are in agreement to accept \$4,190 as full and complete  
2 payment of their claims.

3 MR. BAZAK: Yes.

4 JUDGE LOEHRER: You have made contact with  
5 T. Nickolas, the flooring person, and that they are agreeing to  
6 accept \$9,194 as full and complete payment for their claim.

7 MR. BAZAK: Yes.

8 JUDGE LOEHRER: And you have --

9 JUDGE BELL: And part of the consideration for that  
10 was that they, in turn, recognize that there was a  
11 construction-defect claim by Beso against them for some of the  
12 kitchen flooring.

13 And that Beso is going to assume the responsibility to  
14 rectify any defects, and that is the reason that they are  
15 taking a substantial discount on their bill; is that correct?

16 MR. BAZAK: Yes.

17 JUDGE LOEHRER: And Hyde is willing to discount their  
18 claim and accept \$1700 as full and complete payment of all sums  
19 that they claim to be due and owing under Beso Restaurant.

20 MR. BAZAK: That's correct.

21 JUDGE LOEHRER: Now, we don't have them here, and we  
22 don't have them here in writing, but you're the general  
23 contractor. They all contracted with you --

24 MR. BAZAK: All --

25 JUDGE LOEHRER: -- Baz Construction?

1 MR. BAZAK: All with exception of Hyde.

2 JUDGE LOEHRER: All with the exception of Hyde, And  
3 so you're telling us this has -- well, you're not under oath,  
4 but you're making a truthful and honest statement that these  
5 claims have been settled for this amount of money; is that  
6 correct?

7 MR. BAZAK: Yes. As far as I know per my  
8 conversation with them today.

9 JUDGE BELL: And --

10 JUDGE LOEHRER: Okay.

11 JUDGE BELL: And as consideration in exchange for you  
12 taking only 12,500 on a claim that was many times that, the  
13 understanding is that none of the other people involved in this  
14 will continue to pursue any complaints with the licensing board  
15 or a disciplinary hearing or bond complaints.

16 And they will withdraw those complaints and sign any  
17 releases or any documents necessary to effectuate those not  
18 being held against you nor will anybody make any further claim  
19 against your \$30,000 bond; is that correct?

20 MR. BAZAK: That's correct.

21 JUDGE BELL: Okay.

22 JUDGE LOEHRER: All right. Thank you, sir.

23 MR. BAZAK: I have one more comment --

24 JUDGE LOEHRER: Yes.

25 MR. BAZAK: -- and in terms of Beso. Because

1 Big Town Mechanical is withdrawing their warranty and -- and  
2 Bombard Mechanical had provided the remainder of the plumbing  
3 work over there on a cost-plus basis and in order to get the  
4 project completed, there is no plumbing warranty that Beso has  
5 currently.

6 And if they were to be presented with any plumbing issues  
7 like they were in the paperwork that I received, they would  
8 have to take care of that on their own.

9 JUDGE LOEHRER: Mr. Pisanelli, let's get your comment  
10 on that.

11 MR. PISANELLI: Yeah. I would only correct the  
12 statement that I'm not -- I didn't understand Big Town to be  
13 withdrawing any warranty obligations except as it related to  
14 these --

15 JUDGE LOEHRER: Heat exchangers.

16 MR. PISANELLI: -- heat exchangers.

17 JUDGE LOEHRER: So, Mr. Wayment --

18 (Colloquy not on the record.)

19 JUDGE LOEHRER: -- the warranty that's not being  
20 provided is as to the heat exchangers that haven't been  
21 delivered, yet; is that correct?

22 MR. WAYMENT: Your Honor, we have no warranty  
23 obligations on the entire project because we were terminated  
24 from the project.

25 JUDGE LOEHRER: Okay. That is a slightly different



1 situation. They did their notice, but you, in fact, terminated  
2 them, so they don't have any warranty on the project.

3 MR. PISANELLI: We understand their position.

4 JUDGE LOEHRER: All right. Thank you.

5 Mr. Williams, would you bring up your Bombard --

6 MR. WILLIAMS: Yes.

7 JUDGE LOEHRER: -- and your Royal Metal gentlemen.

8 All right.

9 Would you identify yourself, Mr. Williams, and your client  
10 representatives.

11 MR. WILLIAMS: Absolutely. Donald Williams on behalf  
12 of Bombard Electric, Bombard Mechanical, and Royal Metal Works,  
13 Jim Bailey (phonetic) on behalf of Bombard Electric,  
14 Angelo Ianucci (phonetic) on behalf of Bombard Mechanical and  
15 Royal Metal Works. Angelo is sitting -- or standing next to  
16 me, and Jim is standing next to Angelo.

17 JUDGE LOEHRER: Okay. Now, the proposed settlement  
18 to Bombard Electric at 67.69671 percent of the funds available  
19 is \$207,750.13.

20 Mr. Bailey on behalf of Bombard Electric, is that a sum  
21 that Bombard Electric will accept and, you know, do lien  
22 waivers and in exchange for the check?

23 MR. BAILEY: Yes, Judge.

24 JUDGE LOEHRER: Okay. Mr. Ianucci, on behalf of  
25 Bombard Mechanical, you are to receive the sum of \$200,139.84

1 which is the same percentage of the funds available to pay all  
2 the claims of Bombard Mechanical, and that is net of the claim  
3 of LONG Building which is being paid separately.

4 Is that a satisfactory settlement to you, sir, on behalf  
5 of Bombard Mechanical?

6 MR. IANUCCI: Yes, it is.

7 JUDGE LOEHRER: And you are willing to give lien  
8 releases in exchange for the check.

9 MR. IANUCCI: Yes, I will.

10 JUDGE LOEHRER: All right. Now, on behalf of  
11 Royal Metal Works, Mr. Ianucci, the proposed settlement is the  
12 sum of \$25,352.16 as full payment of all claims for the work at  
13 Beso Restaurant, and is that a satisfactory sum to you, sir?

14 MR. IANUCCI: Yes, it is.

15 JUDGE LOEHRER: And you will do lien releases for all  
16 of the people that provided to you, including Norman Wright,  
17 Oldcastle Glass, and Omniteam.

18 MR. IANUCCI: Yes, I will.

19 JUDGE BELL: Okay.

20 JUDGE LOEHRER: All right. And those will need to be  
21 paid if they haven't been paid or they will be paid when you  
22 get your check.

23 MR. IANUCCI: I'll make sure they're paid before, so  
24 I can turn over the lien releases.

25 JUDGE BELL: Yeah.

1 JUDGE LOEHRER: Okay.

2 JUDGE BELL: Perfect.

3 MR. WILLIAMS: And that's assuming, your Honor, that  
4 those three entities truly did come under our -- we think they  
5 did. We're quite certain they did.

6 JUDGE BELL: Okay.

7 MR. WILLIAMS: But the answer is if they were under  
8 us, we will get lien releases or indemnify.

9 JUDGE BELL: Okay.

10 JUDGE LOEHRER: All right. Big Town Mechanical,  
11 would you please come forward.

12 (Colloquy not on the record.)

13 JUDGE LOEHRER: And, sir, would you please introduce  
14 yourself and your client representative.

15 MR. WAYMENT: Dallin Wayment on behalf of  
16 Big Town Mechanical with James Barton, President.

17 JUDGE LOEHRER: All right. And, Mr. Barton, the  
18 proposed payment under this settlement to Big Town Mechanical  
19 is \$147,860 net of the moneys that are due to F. Rodgers  
20 because they're being paid separately.

21 And, additionally, there has been a claim made upon Beso  
22 by A-1 Concrete for the sum of \$5,730 which we believe is a sub  
23 of yours. And so as part of the \$147,860, you would be taking  
24 care of that claimant; is that correct?

25 MR. BARTON: Yes, your Honor.

1 JUDGE LOEHRER: And is the \$147,860 satisfactory to  
2 you, reluctantly, as full settlement for all your claims at the  
3 Beso Restaurant?

4 MR. BARTON: Yes, your Honor, reluctantly.

5 JUDGE LOEHRER: I understand, and you're also going  
6 to make those heat exchangers available for Beso's pickup. All  
7 they're going to -- all you're going to do is make them  
8 available, and they're going to pick them up and take care of  
9 them thereafter.

10 MR. BARTON: Yes. After payment, your Honor.

11 JUDGE LOEHRER: After you receive payment.

12 JUDGE BELL: Fair enough.

13 JUDGE LOEHRER: Thank you.

14 F. Rodgers.

15 And if you would please identify yourself, sir, for the  
16 record.

17 (Colloquy not on the record.)

18 MR. WERNER: Thank you, your Honor. Reed Werner for  
19 F. Rodgers Corporation.

20 JUDGE LOEHRER: And, Mr. Rodgers (sic), you have  
21 indicated you're in-house counsel, so you are both counsel and  
22 the client today; is that correct?

23 MR. WERNER: That is correct, your Honor.

24 JUDGE LOEHRER: All right. And the proposed  
25 settlement to F. Rodgers in this case is \$14,852.10 which is

1 the same percentage that the other lien-claimant parties to  
2 this action are receiving.

3 Is that satisfactory to F. Rodgers as full and  
4 complete payment of all sums due and owing on the Beso  
5 project?

6 MR. WERNER: Yes, your Honor.

7 JUDGE LOEHRER: And you will provide lien releases  
8 and waivers in exchange for your check.

9 MR. WERNER: Yes.

10 JUDGE LOEHRER: Thank you.

11 LONG Building Tech.

12 MR. PEREZ: Good afternoon, your Honor. Frank Perez  
13 on behalf of LONG Building Tech.

14 JUDGE LOEHRER: Thank you, Mr. Perez, and welcome.  
15 Mr. Jeff Long, your principal, has been here all day up until  
16 slightly a short time ago when he had to leave.

17 The proposed settlement for LONG Building Tech is the sum  
18 of \$30,623.18. Is that satisfactory to Mr. Long and yourself  
19 as full and complete settlement for all claims that you have at  
20 the Beso Restaurant?

21 MR. PEREZ: Yes, it is.

22 JUDGE LOEHRER: And you will and your client will  
23 execute lien releases and waivers and exchange those with  
24 Mr. Thiel for your check; is that correct?

25 MR. PEREZ: That's correct, your Honor.

1 JUDGE LOEHRER: All right. And Cell-Crete.

2 (Colloquy not on the record.)

3 JUDGE LOEHRER: And, Mr. Reade, would you please  
4 identify yourself and Mr. Smith your -- go ahead -- rep.

5 MR. READE: Right. Christopher Reade, 6791, on  
6 behalf of Cell-Crete. I have William Smith of Cell-Crete with  
7 me here today.

8 JUDGE LOEHRER: All right. And, Mr. Smith, the  
9 proposed payment to Cell-Crete is the sum of \$38,618.84. Is  
10 that sum, sir, satisfactory to you to settle full and complete  
11 on all claims that you have at Beso?

12 MR. SMITH: Yes, it is.

13 JUDGE LOEHRER: All right. And you will execute lien  
14 releases and waivers in exchange for your check --

15 MR. SMITH: That's correct.

16 JUDGE LOEHRER: -- for that amount of money.

17 Now, on behalf of all the subs that are here today, do you  
18 agree that none of you will pursue the contractor's bond of  
19 Baz Construction?

20 And that should you or your client have filed a claim  
21 against the licensing of Baz or any other type of claim against  
22 Baz at the Contractors Board that you will take affirmative  
23 action to withdraw those claims?

24 Is there anybody here that's not going to do that?

25 So by everyone's silence, I can safely assure myself that

1 if there is such a claim that you will withdraw it, and that  
2 none of you will make any claim against Baz Construction's  
3 contractor's bond.

4 Mr. --

5 MR. WILLIAMS: Your Honor, my client would like --

6 JUDGE LOEHRER: Wait a minute.

7 MR. WILLIAMS: -- to make sure that goes both ways.  
8 That Baz Construction would release or waive any future claim  
9 to the Contractors Board.

10 JUDGE BELL: And I think that's only fair.

11 JUDGE LOEHRER: And, Robert Bazak and Mr. Jerez, is  
12 that agreeable to the two of you?

13 MR. BAZAK: Yes.

14 JUDGE LOEHRER: All right. Now, I always forget  
15 something, so --

16 (Colloquy not on the record.)

17 JUDGE BELL: No. The only thing I would suggest is  
18 if there's anything unsaid now is the time.

19 JUDGE LOEHRER: Okay.

20 JUDGE BELL: Speak up or forever hold your peace.

21 MR. WILLIAMS: There is --

22 JUDGE LOEHRER: Okay. Now, there is one thing  
23 having to do with the money that's at Valley Construction  
24 Company.

25 It is our recommendation that the full amount of the

1 retention payment in the construction account for  
2 Beso Restaurant be paid to Mr. Thiel for disbursement.

3 And that no funds be withheld from that money for costs or  
4 fees, and that the full amount of the money in that account be  
5 transferred over to Mr. Thiel for payment.

6 And that's our recommendation here on the record, and  
7 that's going to be our recommendation to the trial judge who's  
8 in charge of this.

9 We have been advised that there is a claim for attorney  
10 fees and costs out of that, but no lawyer or no representative  
11 showed up today.

12 And now we're into our fifth hour or sixth hour of a  
13 settlement conference, and that the Court can treat it however  
14 they like, but no money comes out of the account.

15 And Valley I presume has been paid for servicing and being  
16 the servicing agent on this account. They've already received  
17 some funds, so it's not like they're going totally unpaid, and  
18 that they shall receive no further funds nor shall their  
19 attorney --

20 JUDGE BELL: But we --

21 JUDGE LOEHRER: -- be allowed to take money out of  
22 that account --

23 JUDGE BELL: We --

24 JUDGE LOEHRER: -- for attorney fees and costs.

25 JUDGE BELL: We can only recommend that to



1 Judge Gonzalez. Now, I feel pretty comfortable that she's  
2 probably going to do that. But if she didn't, and she took out  
3 1,000 or 1500, it would alter everybody's number by 20 cents or  
4 something.

5 MR. PISANELLI: In such an event, your Honor, should  
6 we have a plan B that everyone in the room agrees to the  
7 pro rata --

8 JUDGE LOEHRER: No.

9 MR. PISANELLI: -- reduction?

10 JUDGE LOEHRER: No. Because then that would  
11 encourage them to do that. That would encourage the judge to  
12 do that.

13 MR. PISANELLI: But it also leaves a settlement  
14 agreement that a lot of people worked very hard for --

15 JUDGE LOEHRER: I know.

16 MR. PISANELLI: -- with one very weak link that could  
17 have the whole thing fall apart.

18 JUDGE BELL: I don't --

19 JUDGE LOEHRER: I --

20 JUDGE BELL: I don't think it's going to be enough  
21 that it would make any difference. I rather expect when we --  
22 we're going to leave here and go down there and explain to her  
23 what we've done and what our recommendation is. I'd be very  
24 surprised --

25 MR. PISANELLI: Fair enough.

1 JUDGE LOEHRER: If it wasn't followed.

2 MR. PISANELLI: Okay.

3 JUDGE LOEHRER: All right. Anybody else have  
4 anything to add?

5 Mr. Bazak.

6 MR. BAZAK: Yeah. I would like a clarification  
7 regarding the plumbing warranty one more time, and I understand  
8 Beso --

9 JUDGE LOEHRER: All right. Big Town has no warranty  
10 because they were kicked off the job, and, statutorily, that's  
11 correct. They have no warranty on the job.

12 Don, what do you want to say, Mr. Williams?

13 MR. WILLIAMS: Are you clear on that? I was going to  
14 talk about another point. You asked if anything else needed --

15 JUDGE BELL: Yes. Go ahead, Don.

16 MR. WILLIAMS: -- to come before you.

17 MR. BAZAK: Well, okay. So Bombard Mechanical did  
18 the rest of the plumbing work, but they were on a cost-plus  
19 basis. If they were called out, it -- I would expect them to  
20 want to charge for their warranty -- for their warranty  
21 services.

22 MR. WILLIAMS: That was a discussion that we had  
23 outside. Counsel, Mr. Pisanelli, had that discussion outside,  
24 and we were just going to reserve all rights in that respect.

25 JUDGE LOEHRER: Okay.

1 MR. PISANELLI: And --

2 JUDGE LOEHRER: So it won't --

3 MR. PISANELLI: And I carefully chose my words when I  
4 said I understand --

5 JUDGE LOEHRER: Right.

6 MR. PISANELLI: -- Big Town's position.

7 JUDGE LOEHRER: I understand.

8 MR. PISANELLI: But I don't necessarily agree with  
9 it. There are times when the warranties are discharged and  
10 times when it's not.

11 And if we find ourselves with a warranty claim, and  
12 Bombard --

13 JUDGE BELL: Well --

14 MR. WILLIAMS: -- said this is their work, and we  
15 present it to them, and they say no, the parties will have to  
16 fight it out --

17 JUDGE BELL: You'll have --

18 MR. PISANELLI: -- if they have to.

19 JUDGE BELL: -- to work it out --

20 MR. PISANELLI: Yeah.

21 JUDGE BELL: -- because we got a three-week window.

22 JUDGE LOEHRER: We've got a three-week window.

23 JUDGE BELL: And it's --

24 JUDGE LOEHRER: And we're hoping and praying --

25 JUDGE BELL: -- relatively small stuff.

1 JUDGE LOEHRER: -- we're --

2 JUDGE BELL: I'm sure somehow we can get it worked  
3 out --

4 MR. PISANELLI: I don't --

5 JUDGE BELL: -- without us having to intervene.

6 MR. PISANELLI: Agreed.

7 MR. BAZAK: Um-h'm.

8 JUDGE BELL: All right.

9 JUDGE LOEHRER: Anything else?

10 MR. WILLIAMS: Yes, your Honor. Drafting of  
11 documents --

12 JUDGE LOEHRER: Oh.

13 MR. WILLIAMS: -- with respect to lien releases and  
14 things like that. I would nominate Mr. Pisanelli who has done,  
15 obviously, an outstanding job on behalf of his client in  
16 getting our lien claims reduced to take the lead in drafting  
17 appropriate lien releases that he wants our clients to execute.

18 MR. PISANELLI: I --

19 MR. WILLIAMS: And we would give him comments on  
20 those.

21 MR. PISANELLI: I am clearly not qualified to do that  
22 type of drafting, your Honor. Of course, I'm kidding. I  
23 didn't expect that these lien releases were going to be  
24 anything other than again in the ordinary course --

25 JUDGE BELL: This is standard stuff.

1 MR. PISANELLI: -- the contracted four-standard  
2 releases that we've used forever.

3 JUDGE LOEHRER: Mr. Thiel, is there any special form  
4 that --

5 MR. THIEL: No. I don't --

6 JUDGE LOEHRER: -- your office requires because if  
7 you require a special form you ought to do them.

8 MR. THIEL: We require the form that's required by  
9 the State, the statutory forms.

10 JUDGE LOEHRER: All right. The statutory  
11 lien-release forms will work. Send them to Mr. Thiel's office.

12 MR. WILLIAMS: No. My understanding is that somebody  
13 will send them out in bulk to us. We will give them to our  
14 clients, and then we'll get them back to you.

15 JUDGE BELL: Sign them. They'll give them back to  
16 Mr. Thiel.

17 JUDGE LOEHRER: Mr. Thiel, you've got to send them  
18 out I guess. Mr. Thiel, you've got to send them out.

19 JUDGE BELL: And when --

20 JUDGE LOEHRER: You've got --

21 JUDGE BELL: When he gets --

22 JUDGE LOEHRER: You've got the deep pocket here.

23 JUDGE BELL: When he gets them --

24 JUDGE LOEHRER: You're --

25 JUDGE BELL: When he gets them, he's cutting the

1 check.

2 (Colloquy not on the record.)

3 JUDGE LOEHRER: All right. Now --

4 MR. THIEL: I'm the innocent bystander.

5 JUDGE LOEHRER: Yeah, I know. Well, you send --

6 MR. WILLIAMS: Yeah. The old innocent bystander.

7 JUDGE LOEHRER: -- the lien releases out.

8 (Colloquy not on the record.)

9 MR. PISANELLI: Mr. Williams does raise a fair point,  
10 however. Aside from the releases of whether we're going to  
11 have a comprehensive call it omnibus agreement --

12 JUDGE LOEHRER: We need to have --

13 MR. PISANELLI: -- for all of us.

14 JUDGE LOEHRER: -- a settlement. I don't know that  
15 we need to do this -- assuming it happens, you don't need it in  
16 writing.

17 But what we do need to do, when all the checks are paid,  
18 there needs to be a stipulated dismissal of all these  
19 lawsuits.

20 Now, who wants to do that paperwork?

21 MR. PISANELLI: I'll do that.

22 JUDGE LOEHRER: That would be you.

23 MR. PISANELLI: I'll do that.

24 JUDGE LOEHRER: You do the stipulated deal. You get  
25 the signatures on it, but you cannot submit it to the Court

1 until all the checks have been issued.

2 MR. PISANELLI: So then what we're saying by way of  
3 settlement agreement, it's this record is our settlement  
4 agreement.

5 JUDGE LOEHRER: Yes.

6 JUDGE BELL: Well, it's there.

7 JUDGE LOEHRER: And it --

8 JUDGE BELL: You can just get a copy of this.

9 JUDGE LOEHRER: You get a copy of it.

10 JUDGE BELL: It doesn't cost as much money, and  
11 nobody pays any attorneys fees for it. And if there's a beef,  
12 you can call Sally. She lives in Texas.

13 JUDGE LOEHRER: No. My cell phone doesn't work.

14 MR. WILLIAMS: One last point, your Honor. I  
15 anticipate that we are going to have to go in front of  
16 Judge Gonzalez again. We have a mandatory meeting there --

17 MR. READE: A status check in two weeks.

18 MR. WILLIAMS: -- a status --

19 JUDGE BELL: We're going to walk down there --

20 JUDGE LOEHRER: We're going --

21 JUDGE BELL: -- from here.

22 JUDGE LOEHRER: -- to go right now.

23 JUDGE BELL: And we're going --

24 JUDGE LOEHRER: Doesn't this --

25 JUDGE BELL: -- to tell her to --

1 JUDGE LOEHRER: This is over.

2 JUDGE BELL: We're going to suggest to her that she  
3 grant the impleader and the money being sent over to Mr. Thiel,  
4 that she deny any requests for attorneys fees, and that she  
5 vacate any appearances that are there and just let the  
6 paperwork flow because that makes sense.

7 And I'm sure that's what's going to happen, Don.

8 MR. WILLIAMS: Okay. Very well, then. I am okay  
9 with that.

10 Thank you.

11 JUDGE BELL: Okay.

12 JUDGE LOEHRER: All right. Thank you all for being  
13 here, and we appreciate you all working hard towards --

14 MR. WILLIAMS: And thank you, your Honors.

15 JUDGE LOEHRER: -- a global resolution.

16 (Colloquy not on the record.)

17 MR. PISANELLI: Thank you for all your help.

18 (Court concluded at 01:47:28 p.m.)  
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23  
24  
25



1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.  
4

5  
6 /s/ Lisa L. Cline

11/29/10

7 Lisa L. Cline, Transcriptionist

Date